

HOUSE BILL NO. 182

INTRODUCED BY K. PETERSON

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE FAIR INFLUENCE IN GOVERNMENT ACT;
RESTRICTING LOBBYING BY STATE EMPLOYEES AND STATE AGENCIES; ESTABLISHING PROCEDURES
CONCERNING INFORMATIONAL TESTIMONY BY STATE EMPLOYEES; ESTABLISHING PENALTIES; AND
AMENDING SECTIONS 2-2-103, 2-2-121, 5-7-102, 5-7-305, AND 87-1-204, MCA."

WHEREAS, the legitimate role of public employees in providing useful information and testimony is fully
acknowledged, but the lobbying and advocacy role of public servants is a source of growing concern in our
democratic society; and

WHEREAS, common citizens who lack the easy access to legislative proceedings enjoyed by onsite
public employees feel increasingly crowded out of the process; and

WHEREAS, government should be primarily influenced by the citizens it serves rather than by the other
branches of government; and

WHEREAS, the Legislature wishes to encourage greater citizen involvement, influence, and trust in the
lawmaking process.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. [Sections 1 through 4] may be cited as the "Fair Influence in
Government Act".

NEW SECTION. Section 2. Legislative policy -- findings. (1) It is the policy of the legislature that state
funds may be spent only for the specific purpose for which the funds were appropriated. The expenditure of state
funds to influence pending legislation, a legislator, or the legislature by lobbying is never the purpose of an
appropriation unless the purpose is specifically stated in the legislation appropriating the funds. The expenditure
of state resources, including goods and employee time, beyond or outside the purposes specified in the
appropriation violates the public trust and legislative policy.

(2) The legislature finds that state employees who support or oppose matters before the legislature have

1 an unfair influence on legislation due to ready access to state agency resources and to members of the
2 legislature. This places the general public at a disadvantage when seeking to influence legislative policymaking.
3 Therefore, restrictions on state employee lobbying are necessary to promote a fair legislative process during
4 legislative sessions.

5
6 **NEW SECTION. Section 3. Definitions.** As used in [sections 1 through 4], the following definitions
7 apply:

8 (1) "State agency" means a department, board, commission, office, bureau, institution, or unit of state
9 government in the executive or judicial branch, including the university system.

10 (2) "State employee" means an employee of a state agency, except an elected official.

11
12 **NEW SECTION. Section 4. Prohibition on lobbying by state employees and state agencies --**
13 **certain informational testimony authorized.** (1) A state employee or state agency is prohibited from lobbying
14 a member or committee of the legislature during a legislative session and may provide informational testimony
15 to a committee only as provided in subsection (2).

16 (2) A state employee or a state agency representative may appear before a legislative committee during
17 a session and provide informational testimony on a specific bill or topic only upon the written request of a
18 legislator. An individual appearing and providing information under this subsection may provide only the
19 information specified in the request and may not support or oppose any matter before the legislature.

20 (3) Nothing in this section may be construed to:

21 (a) preclude a legislator from initiating contact with a state employee, a state agency, or a state agency
22 representative to ask questions or request information;

23 (b) limit or preclude an individual from exercising the individual's constitutional right to communicate with
24 legislators; or

25 (c) prohibit lobbying by an individual who is acting on the individual's own time and own behalf or on
26 behalf of a principal that is not a state agency.

27
28 **Section 5.** Section 2-2-103, MCA, is amended to read:

29 **"2-2-103. Public trust -- public duty.** (1) The holding of public office or employment is a public trust,
30 created by the confidence that the electorate reposes in the integrity of public officers, legislators, and public

employees. A public officer, legislator, or public employee shall carry out the individual's duties for the benefit of the people of the state.

(2) A public officer, legislator, or public employee whose conduct departs from the person's public duty is liable to the people of the state and is subject to the penalties provided in this part for abuse of the public's trust.

(3) This part sets forth various rules of conduct, the transgression of any of which is a violation of public duty, and various ethical principles, the transgression of any of which must be avoided.

(4) (a) The enforcement of this part for:

(i) state officers, legislators, and state employees, including a state employee covered under the Fair Influence in Government Act provided for in [sections 1 through 4], is provided for in 2-2-136;

(ii) legislators, involving legislative acts, is provided for in 2-2-135 and for all other acts is provided for in 2-2-136;

(iii) local government officers and employees is provided for in 2-2-144.

(b) Any money collected in the civil actions that is not reimbursement for the cost of the action must be deposited in the general fund of the unit of government."

Section 6. Section 2-2-121, MCA, is amended to read:

"2-2-121. Rules of conduct for public officers and public employees. (1) Proof of commission of any act enumerated in subsection (2) is proof that the actor has breached a public duty.

(2) A public officer or a public employee may not:

(a) subject to subsection (7), use public time, facilities, equipment, supplies, personnel, or funds for the officer's or employee's private business purposes;

(b) engage in a substantial financial transaction for the officer's or employee's private business purposes with a person whom the officer or employee inspects or supervises in the course of official duties;

(c) assist any person for a fee or other compensation in obtaining a contract, claim, license, or other economic benefit from the officer's or employee's agency;

(d) assist any person for a contingent fee in obtaining a contract, claim, license, or other economic benefit from any agency;

(e) perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which the officer or employee either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent; or

(f) solicit or accept employment, or engage in negotiations or meetings to consider employment, with a person whom the officer or employee regulates in the course of official duties without first giving written notification to the officer's or employee's supervisor and department director.

(3) (a) Except as provided in subsection (3)(b), a public officer or public employee may not use public time, facilities, equipment, supplies, personnel, or funds to solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue unless the use is:

(i) authorized by law; or

(ii) properly incidental to another activity required or authorized by law, such as the function of an elected public officer, the officer's staff, or the legislative staff in the normal course of duties.

(b) As used in this subsection (3), "properly incidental to another activity required or authorized by law" does not include any activities related to solicitation of support for or opposition to the nomination or election of a person to public office or political committees organized to support or oppose a candidate or candidates for public office. With respect to ballot issues, properly incidental activities are restricted to:

(i) the activities of a public officer, the public officer's staff, or legislative staff related to determining the impact of passage or failure of a ballot issue on state or local government operations;

(ii) in the case of a school district, as defined in Title 20, chapter 6, compliance with the requirements of law governing public meetings of the local board of trustees, including the resulting dissemination of information by a board of trustees or a school superintendent or a designated employee in a district with no superintendent in support of or opposition to a bond issue or levy submitted to the electors. Public funds may not be expended for any form of commercial advertising in support of or opposition to a bond issue or levy submitted to the electors.

(c) This subsection (3) is not intended to restrict the right of a public officer or public employee to express personal political views.

(4) A candidate, as defined in 13-1-101(6)(a), may not use or permit the use of state funds for any advertisement or public service announcement in a newspaper, on radio, or on television that contains the candidate's name, picture, or voice except in the case of a state or national emergency and then only if the announcement is reasonably necessary to the candidate's official functions.

(5) A public officer or public employee may not participate in a proceeding when an organization, other than an organization or association of local government officials, of which the public officer or public employee

1 is an officer or director is:

2 (a) involved in a proceeding before the employing agency that is within the scope of the public officer's
3 or public employee's job duties; or

4 (b) attempting to influence a local, state, or federal proceeding in which the public officer or public
5 employee represents the state or local government.

6 (6) (a) A public officer or public employee may not engage in any activity, including lobbying, as defined
7 in 5-7-102, on behalf of an organization, other than an organization or association of local government officials,
8 of which the public officer or public employee is a member while performing the public officer's or public
9 employee's job duties. The provisions of this subsection do not prohibit a public officer or public employee from
10 performing charitable fundraising activities if approved by the public officer's or public employee's supervisor or
11 authorized by law.

12 (b) A state employee subject to the Fair Influence in Government Act provided for in [sections 1 through
13 4] who violates a provision of the Fair Influence in Government Act violates public trust and public duty under this
14 section and is subject to the penalty provided in 2-2-136.

15 (7) A listing by a public officer or a public employee in the electronic directory provided for in 30-17-101
16 of any product created outside of work in a public agency is not in violation of subsection (2)(a) of this section.
17 The public officer or public employee may not make arrangements for the listing in the electronic directory during
18 work hours.

19 (8) A department head or a member of a quasi-judicial or rulemaking board may perform an official act
20 notwithstanding the provisions of subsection (2)(e) if participation is necessary to the administration of a statute
21 and if the person complies with the disclosure procedures under 2-2-131.

22 (9) Subsection (2)(d) does not apply to a member of a board, commission, council, or committee unless
23 the member is also a full-time public employee.

24 (10) Subsections (2)(b) and (2)(e) do not prevent a member of the governing body of a local government
25 from performing an official act when the member's participation is necessary to obtain a quorum or to otherwise
26 enable the body to act. The member shall disclose the interest creating the appearance of impropriety prior to
27 performing the official act."

28
29 **Section 7.** Section 5-7-102, MCA, is amended to read:

30 **"5-7-102. Definitions.** The following definitions apply in this chapter:

1 (1) "Appointed state official" means an individual who is appointed:

2 (a) to public office in state government by the governor or the chief justice of the Montana supreme court
3 and who is subject to confirmation by the Montana senate;

4 (b) by the board of regents of higher education to serve either as the commissioner of higher education
5 or as the chief executive officer of a campus of the Montana university system; or

6 (c) by the board of trustees of a community college to serve as president.

7 (2) "Business" means:

8 (a) a holding or interest whose fair market value is greater than \$1,000 in a corporation, partnership, sole
9 proprietorship, firm, enterprise, franchise, association, self-employed person, holding company, joint-stock
10 company, receivership, trust, or other entity or property held in anticipation of profit, but does not include nonprofit
11 organizations; and

12 (b) present or past employment from which benefits, including retirement allowances, are received.

13 (3) "Commissioner" means the commissioner of political practices.

14 (4) "Docket" means the register of lobbyists and principals maintained by the commissioner pursuant
15 to 5-7-201.

16 (5) "Elected federal official" means a person elected to a federal office, including but not limited to a
17 member of the United States senate or house of representatives. The term includes an individual appointed to
18 fill the unexpired term of an elected federal official and an individual who has been elected to a federal office but
19 who has not yet been sworn in.

20 (6) "Elected local official" means an elected officer of a county, a consolidated government, an
21 incorporated city or town, a school district, or a special district. The term includes an individual appointed to fill
22 the unexpired term of an elected local official and an individual who has been elected to a local office but who
23 has not yet been sworn in.

24 (7) (a) "Elected state official" means an individual holding a state office filled by a statewide vote of all
25 the electors of Montana or a state district office, including but not limited to public service commissioners and
26 district court judges. The term includes an individual appointed to fill the unexpired term of an elected state official
27 and an individual who has been elected to a statewide office but who has not yet been sworn in.

28 (b) The term does not include a legislator.

29 (8) "Elected tribal official" means an elected member of a tribal council or other elected office filled by
30 a vote of tribal members. The term includes an individual appointed to fill the unexpired term of an elected tribal

official and an individual who has been elected to a tribal office but who has not yet been sworn in.

(9) "Individual" means a human being.

(10) "Legislator" means an individual holding public office as a representative or a senator in the Montana legislature. The term includes an individual who has been elected to the legislature but who has not yet been sworn in.

(11) (a) "Lobbying" means:

(i) the practice of promoting or opposing the introduction or enactment of legislation before the legislature or legislators; and

(ii) the practice of promoting or opposing official action of any public official or the legislature.

(b) ~~The~~ Subject to [sections 1 through 4], the term does not include actions described in subsections (11)(a)(i) and (11)(a)(ii) when performed by a public official, an elected local official, an elected federal official, or an elected tribal official while acting in an official governmental capacity.

(12) (a) "Lobbyist" means a person who engages in the practice of lobbying.

(b) Lobbyist does not include:

(i) an individual acting solely on the individual's own behalf;

(ii) an individual working for the same principal as a licensed lobbyist if the individual does not have personal contact involving lobbying with a public official or the legislature on behalf of the lobbyist's principal; or

(iii) an individual who receives payments from one or more persons that total less than the amount specified under 5-7-112 in a calendar year.

(c) Nothing in this chapter deprives an individual who is not a lobbyist of the constitutional right to communicate with public officials or the legislature.

(13) (a) "Payment" means distribution, transfer, loan, advance, deposit, gift, or other rendering made or to be made of money, property, or anything of value:

(i) to a lobbyist to influence legislation or official action by an elected local official, a public official, or the legislature;

(ii) directly or indirectly to a lobbyist by a principal, such as salary, fee, compensation, or reimbursement for lobbying expenses; or

(iii) in support of or for assistance to a lobbyist or a lobbying activity, including but not limited to the direct payment of expenses incurred at the request or suggestion of the lobbyist.

(b) The term does not include payments or reimbursements for:

(i) personal and necessary living expenses; or

(ii) travel expenses, unless a principal is otherwise required to report expenses pursuant to 5-7-208.

(14) "Person" means an individual, corporation, association, firm, partnership, state or local government or subdivision of state or local government, or other organization or group of persons.

(15) "Principal" means a person who employs a lobbyist or a person required to report pursuant to 5-7-208.

(16) (a) "Public official" means an elected state official or an appointed state official acting in an official capacity for state government or a legislator.

(b) The term does not include those acting in a judicial or quasi-judicial capacity or performing ministerial acts.

(17) "Unprofessional conduct" means:

(a) violating any of the provisions of this chapter;

(b) instigating action by a public official or the legislature for the purpose of obtaining employment;

(c) attempting to influence the action of a public official or the legislature on a measure pending or to be proposed by:

(i) promising financial support; or

(ii) making public any unsubstantiated charges of improper conduct on the part of a lobbyist, a principal, or a legislator; or

(d) attempting to knowingly deceive a public official or the legislature with regard to the pertinent facts of an official matter or attempting to knowingly misrepresent pertinent facts of an official matter to a public official or the legislature."

Section 8. Section 5-7-305, MCA, is amended to read:

"5-7-305. Penalties and enforcement. (1) (a) A person who violates any of the provisions of this chapter is subject to civil penalties of not less than \$250 and not more than \$7,500 according to the discretion of the district court, as court of original jurisdiction.

(b) A lobbyist who violates any of the provisions of this chapter must have the lobbyist's license suspended or revoked according to the discretion of the court.

(c) Any public official holding elective office adjudged in violation of the provisions of this chapter is additionally subject to recall under the Montana Recall Act, Title 2, chapter 16, part 6, and the violation constitutes

1 an additional basis for recall to those mentioned in 2-16-603(3).

2 (d) A state employee, as defined in [section 3], who violates a provision of the Fair Influence in
3 Government Act provided in [sections 1 through 4] is also subject to the penalty provided for in 2-2-136 for a
4 violation of public duty and public trust under 2-2-121(6)(b).

5 (2) The attorney general, the commissioner, or the county attorney of the county in which the violation
6 takes place may bring a civil action in the name of the state for any appropriate civil remedy.

7 (3) If a civil penalty action is undertaken by the attorney general or the commissioner, all costs
8 associated with the prosecution must be paid by the state of Montana.

9 (4) (a) Any individual who has notified the attorney general, the commissioner, and the appropriate
10 county attorney in writing that there is reason to believe that some portion of this chapter is being violated may
11 bring in the name of the state an action (referred to as a citizen's action) authorized under this chapter if:

12 (i) the attorney general, the commissioner, or the appropriate county attorney has failed to commence
13 an action within 90 days after notice; and

14 (ii) the attorney general, the commissioner, or the county attorney fails to commence an action within 10
15 days after receiving a written notice that a citizen's action will be brought if the attorney general, the
16 commissioner, or the county attorney does not bring an action.

17 (b) Each notification tolls the applicable statute of limitations until the expiration of the waiting period.

18 (c) If the individual who brings the citizen's action prevails, the individual is entitled to be reimbursed by
19 the state of Montana for costs and attorney fees incurred. However, in the case of a citizen's action that is
20 dismissed and that the court also finds was brought without reasonable cause, the court may order the individual
21 commencing the action to pay all costs of trial and reasonable attorney fees incurred by the defendant.

22 (5) A civil action may not be brought under this section more than 3 years after the occurrence of the
23 facts that give rise to the action.

24 (6) All civil penalties imposed pursuant to this section must be deposited in the state general fund.

25 (7) A hearing under this chapter must be held by the court unless the defendant-licensee demands a
26 jury trial. The trial must be held as soon as possible but at least 20 days after the filing of the charges and must
27 take precedence over all other matters pending before the court.

28 (8) If the court finds for the plaintiff, judgment must be rendered revoking or suspending the license and
29 the clerk of court shall file a certified copy of the judgment with the commissioner."
30

Section 9. Section 87-1-204, MCA, is amended to read:

"87-1-204. Political activity of employees. While retaining the right to vote ~~as he may please~~ and to express his opinions on all political questions, ~~no an~~ an employee of the department may not use ~~his~~ the employee's official authority or influence for the purpose of interfering with an election or affecting ~~the~~ the election results thereof or for the purpose of coercing or influencing the political actions of any person or body, including the legislature pursuant to the Fair Influence in Government Act provided in [sections 1 through 4]."

NEW SECTION. **Section 10. Codification instruction.** [Sections 1 through 4] are intended to be codified as an integral part of Title 5, chapter 7, and the provisions of Title 5, chapter 7, apply to [sections 1 through 4].

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